

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Denver Radio Electronics & Technology)	File No. 0003517032
)	
Application for Authority To Operate an)	
Industrial/Land Transportation Station in the State)	
of Wyoming and Request for Waiver of 900 MHz)	
Application Filing Freeze)	

ORDER

Adopted: February 17, 2010

Released: February 17, 2010

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* Denver Radio Electronics & Technology (Denver Radio) has filed an application seeking a new license to operate on 900 MHz Business/Industrial Land Transportation (B/ILT) spectrum. As part of that application, Denver Radio has requested a waiver of the Commission's freeze on the filing of applications for new 900 MHz B/ILT licenses. For the reasons stated below, we deny the request for waiver and dismiss Denver Radio's application.

2. *Background.* On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze¹ on the filing of applications for new 900 MHz B/ILT authorizations because it feared that the exceptionally large number of such applications it had received at that time could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process² designed to resolve interference to public safety communications. The Bureau stated that it would continue to accept applications for license modification, and would entertain requests for waiver of the 900 MHz application freeze.³ Subsequently, the Commission released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz B/ILT band, which reaffirmed the freeze and reiterated that the Commission would consider requests for waiver of the freeze.⁴ In October 2008, the Commission released a report and order that lifts the freeze on a rolling basis, the freeze removal being tied to the completion of rebanding in each 800 MHz National Public Safety Planning

¹ See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules To Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

² See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969, 15127-28 ¶¶ 335-337 (2004) (*900 MHz R&O*).

³ See *900 MHz Freeze PN*, 19 FCC Rcd at 18278 n.7.

⁴ See *900 MHz NPRM*, 20 FCC Rcd at 3857 ¶ 67.

Advisory Committee (NPSPAC) region.⁵ The freeze has not been lifted in the NPSPAC region in which Denver Radio seeks authorization.

3. On July 25, 2008, Denver Radio filed the above-captioned application for a new mobile relay facility 900 MHz license, specifically requesting waiver of the freeze.⁶ Denver Radio states that it has maintenance facilities in the State of Wyoming, where it and its contractors work on communications equipment in the oil and gas fields in Sweetwater County, Wyoming.⁷ Denver Radio asserts that it initially sought frequencies in the VHF band, but that it ascertained, through a search of the Commission's Universal Licensing System (ULS), that the State of Wyoming had applied for most of the VHF frequencies for a statewide public safety communications system (WYLINK), which Denver Radio states would limit its ability to expand on VHF frequencies. Denver Radio states that it determined that the 900 MHz B/ILT frequencies would instead work well for its communications needs.⁸

4. The Bureau returned Denver Radio's application on August 26, 2008.⁹ The return letter stated that Denver Radio had not made a sufficient showing to justify a waiver of the freeze, but that the Bureau would allow Denver Radio to amend its application to supplement the justification for the requested waiver of the freeze.¹⁰ On September 8, 2008, Denver Radio amended its application; the revised justification renews Denver Radio's statements that it would like to remove itself from the VHF band in favor of the State of Wyoming for WYLINK. Denver Radio indicates it has conducted tests at 900 MHz and that it has purchased equipment and constructed the first of five sites for its communications needs in Sweetwater County.¹¹

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ Under either prong of this standard, we conclude Denver Radio has not justified a waiver of the 900 MHz B/ILT freeze.

6. Denver Radio has not demonstrated how the underlying purpose of the freeze (*i.e.*, to preserve adequate spectrum resources during 800 MHz band reconfiguration) would be frustrated by application in this instance, nor has it demonstrated sufficiently how granting the waiver and allowing it to file an application for 900 MHz B/ILT frequencies would be in the public interest. Denver Radio also

⁵ See Amendment of Part 90 of the Commission's Rules To Provide for Flexible Use of the 896-901 and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, *Report and Order*, 23 FCC Rcd 15856, 15872-73 ¶¶ 27-31 (2008) (*900 MHz B/ILT Order*) (*recon. pending*).

⁶ See File No. 0003517032 (filed Jul. 25, 2008 (Waiver Request), amended Sept. 8, 2008 (Supplemental Waiver Request)).

⁷ Waiver Request at 1.

⁸ Waiver Request at 1.

⁹ See File No. 0003517032, Letter Ref. No. 4776544 (*attached to application*).

¹⁰ *Id.*

¹¹ See Supplemental Waiver at 1.

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

has not shown that maintaining the freeze under the strictures and conditions of the 900 MHz R&O would be inequitable, unduly burdensome, or leaving Denver Radio with no reasonable alternative.

7. The Bureau has granted waiver of the freeze in only a handful of cases. In *Georgia Pacific Corporation* (Georgia Pacific), the applicant's authorization for certain 900 MHz B/ILT frequencies expired by its own term for failure to timely renew the authorization.¹⁴ We granted Georgia Pacific's request to waive the freeze and apply for the same frequencies it had recently lost because the underlying purposes of the freeze (that is, keeping unencumbered spectrum available for 800 MHz rebanding) would not be frustrated if Georgia Pacific, by merely "re-occupying" its former frequencies, did not acquire new, unencumbered 900 MHz B/ILT spectrum.¹⁵ The majority of cases where we have granted a waiver of the freeze involved situations where the new facility was a replacement of facilities that had been properly authorized at the time the freeze was imposed but for which the licenses had subsequently and inadvertently been allowed to expire.¹⁶ We also granted a waiver to Dominion Nuclear Connecticut, Inc. (Dominion) because a new Nuclear Regulatory Commission homeland security requirement (a unique circumstance) required Dominion to forego its 450 MHz communications system.¹⁷ Absent a compelling reason that meets the Commission's waiver standard, we will not waive the freeze to allow for a new authorization of unencumbered 900 MHz B/ILT spectrum. Denver Radio has not made a demonstration that would warrant grant of a waiver of the freeze in light of our waiver requirements and their application in the context of the 900 MHz B/ILT application freeze.

8. *Ordering Clauses.* ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver filed by Denver Radio Electronics & Technology on July 25, 2008, and amended on September 8, 2008, IS DENIED, and application File No. 0003517032 IS DISMISSED in accordance with this *Order* and the Commission's Rules.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁴ *Georgia Pacific Corporation, Order*, 21 FCC Rcd 15077 (MD WTB 2006).

¹⁵ *Id.* at 15078-79 ¶¶ 6-7. Notwithstanding the waiver grant, we cautioned that a licensee must abide by the Commission's filing deadlines. *Id.* at 15079 ¶ 7 n.19.

¹⁶ *See* Hyatt Corporation d/b/a Hyatt Regency Atlanta, *Order*, 22 FCC Rcd 734 (MD WTB 2007); Cam Jo, Inc., DBA Clearwater Yellow Cab Pascot & Tarpon Springs, *Order*, 22 FCC Rcd 3843 (MD WTB 2007); Disneyland Resort, *Order*, 21 FCC Rcd 536 (PSCID WTB 2006) (granting waiver requests to re-apply for the same 900 MHz B/ILT spectrum and authorizations that had expired due to failure to timely renew).

¹⁷ *Dominion Nuclear Connecticut, Inc., Order*, 21 FCC Rcd 14345, 14346 ¶¶ 4-6 (MD WTB 2006).